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Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NEW JERSEY**

JUSTIN SEIDEL

Plaintiff,

v.

**BUENA BOROUGH POLICE
 DEPARTMENT**

Defendant

No.

Jury Trial Demanded

COMPLAINT

PRELIMINARY STATEMENT

Justin Seidel (the “Plaintiff”), by and through his counsel, brings this lawsuit against his employer, Buena Borough Police Department (the “Defendant”) seeking all available relief under the Federal Fair Labor Standards Act for the willful failure to compensate the Plaintiff at the rate required by the aforementioned statute. Plaintiff is seeking, *inter alia*, payment for unpaid overtime in which the Defendant failed to pay him at a rate of one and one-half times his hour wage for all of the hours he worked in excess of 40. The following allegations are based on personal experience of the Plaintiff.

I. JURISDICTION

1. This action is brought pursuant to Fair Labor Standards Act of 1938 (“FLSA”), as amended, 29 U.S.C. § 201 *et seq.*; and pursuant to 28 U.S.C. §1331.

II. VENUE

2. All actions complained of herein took place within the jurisdiction of the United States District Court for the District of New Jersey as the place in which the claims arose, and the place where Defendant resides.
3. Venue is accordingly invoked pursuant to the dictates of 28 U.S.C. §1391(b).

III. PARTIES

4. Plaintiff is a 27 year-old adult male who currently resides in Millville, New Jersey.
5. Defendant is a municipal entity located in Atlantic County, New Jersey, with an address of 616 Central Avenue, Minotola, NJ 08341.

III. STATEMENT OF FACTS

6. Plaintiff has been employed by the Defendant since 2012 in the capacity of a police officer; specifically, he functions as a patrolman.
7. For the past 5 years, Plaintiff has had an official status with the Defendant as a “part-time” employee.
8. Plaintiff does not receive any benefits through the department, and is not a member of any union.
9. Plaintiff does not perform any management functions.

10. Plaintiff is not a party to any collective bargaining agreement.
11. At the time of his hire, Plaintiff earned \$14.26 per hour.
12. Currently, Plaintiff is paid \$15.14 per hour.
13. While officially a part-time employee, Plaintiff often times works as many hours per week as full-time officers.
14. On a weekly basis, Plaintiff frequently worked in excess of forty (40) hours.
15. Plaintiff's time is recorded using the Police Officer Scheduling System ("POSS"); his weekly hours can be verified through POSS.
16. Upon information and belief, each of Defendant's pay-period covers a fourteen (14) day interval of time.
17. Regardless of how many hours the Plaintiff works, he is compensated at his base hourly wage.
18. For all hours that Plaintiff works in excess of forty (40) in a given week, Defendant compensates him at his base hourly wage, or "straight time." That is, Defendant does not compensate Plaintiff at a rate of one and one-half times his hourly rate for the hours he works over forty (40).
19. At no point in his tenure with the Defendant has the Plaintiff ever received overtime compensation at a rate of one and one-half times his hourly wage, despite working numerous hours in excess of forty (40) per week.
20. On numerous occasions, Plaintiff has complained about Defendant's failure to pay him overtime compensation.
21. Plaintiff has complained to Cindi LoGuidice, Defendant's financial officer.

22. In addition, Plaintiff has voiced his complaints about being shorted on overtime pay to Sgt. Sam Martinelli.
23. Despite Plaintiff's complaints, Defendant failed to address his concerns.
24. Despite Plaintiff's complaints, he has not been paid at the rate of one and one-half times his hourly wage for the hours that he worked in excess of 40 per week.
25. At all relevant times herein, Plaintiff was employed by the Defendant.

COUNT I
VIOLATION OF THE FLSA (29 U.S.C. §§ 201 *et seq.*)

26. All of the preceding paragraphs are hereby incorporated by reference as if fully set forth herein.
27. The FLSA requires an employer to pay an employee who works more than forty hours per week at a rate of one-and-one half times the employee's regular hourly rate for every hour over 40. 29 U.S.C. § 207.
28. The FLSA require employers to keep payroll records of the following: 1) hours worked per day; 2) total hours worked per week; 3) total daily or weekly straight-time earnings; and 4) total premium pay for overtime hours. See 29 C.F.R. § 516.2
29. The FLSA applies to government employees. Garcia v. San Antonio Metro. Transit. Auth., 469 U.S. 528 (1985).
30. Sovereign immunity does not extend to suits prosecuted against a municipal corporation or other governmental entity which is not an arm of the State. Alden v. Maine, 527 U.S. 706, 756 (1999).

31. “It is well settled that ‘[a] separate cause of action for overtime compensation accrues at each regular payday immediately following the work period during which the services were rendered and for which the overtime compensation is claimed.’ Mitchell v. Lancaster Milk Co., 185 F.Supp. 66, 70 (M.D. Pa.1960)
32. The FLSA mandates posting requirement for certain notices appraising employees of an employer’s requirements under the FLSA.
33. Every employer with employees subject to the FLSA’s minimum wage provisions shall post and keep posted a notice explaining the FLSA, in conspicuous places in every establishment where such employees are employed so as to permit them to readily observe a copy. 29 C.F.R. § 516.4.
34. An employer's failure to post a statutorily required notices under the FLSA tolls the running of any period of limitations. Henchy v. City of Absecon, 148 F.Supp.2d 435, 439 (D.N.J. 2001)
35. The Defendant failed compensate the Plaintiff a rate of one and one-half times his hourly wage for all of the hours that he worked above 40.
36. Defendant engaged in an intentional pattern, policy and practice of violating the FLSA.
37. The Defendant failed to post the required notices as mandated by the FLSA.
38. Defendant’s violation of the FLSA has been willful and intentional.
39. The Plaintiff complained to Defendant about not being properly compensated for overtime.
40. Defendant ignored Plaintiff’s complaints about unpaid overtime compensation.
41. The Defendant did not make a good faith effort to comply with the FLSA with respect to its compensation of Plaintiff.

42. The Defendant's violations of the FLSA were willful.
43. During all relevant times, Plaintiff was entitled to the FLSA protections.
44. Plaintiff has been economically damaged by Defendant's failure to pay overtime wages at a rate of one and one-half times his hourly wage.

WHEREFORE, Plaintiff seeks to recover such unpaid overtime, liquidated damages, prejudgment interest, negative tax consequence damages, attorneys' fees, costs, and other compensation pursuant to 29 U.S.C. §§ 201 *et seq.*

Respectfully submitted,

By: /s/ *Franklin J. Rooks Jr.*

FJR5566
Franklin J. Rooks Jr., Esq.
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Jared A. Jacobson, Esq.
PA Attorney ID: 201382
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Marlton, NJ 08053
(856) 874-8999
(856) 494-1707*fax*
Attorney for Plaintiff, Justin Seidel
Dated: March 3, 2017

CERTIFICATE OF SERVICE

I, Franklin J. Rooks Jr., certify that I served Plaintiff's Complaint via the Court's ECF system.

By: FJR5566

Franklin J. Rooks Jr., Esq.
NJ Attorney ID: 023802010
Jared A. Jacobson, Esq.
NJ Attorney ID: 022002005
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(856) 874-8999
(856) 494-1707*fax*
Attorney for Plaintiff, Justin Seidel
Dated: March 1, 2017

JS 44 (Rev. 07/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Justin Seidel

(b) County of Residence of First Listed Plaintiff **Cumberland**
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, Email and Telephone Number)

Franklin J Rooks Jr, Esq., Jacobson & Rooks LLC, 525 Route 73 North,
Suite 104, Marlton, NJ 08053 (856) 874-8999

DEFENDANTS

Buena Borough Police Department

County of Residence of First Listed Defendant **Atlantic**
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. s201 et., seq.

Brief description of cause:
Violation of overtime requirements under FLSA

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

03/03/2017

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IEP

JUDGE

MAG. JUDGE

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of New Jersey



Justin Seidel

Plaintiff

v.

Buena Borough Police Department

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Buena Borough Police Department
616 Central Avenue
Minotola, NJ 08341

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Franklin J. Rooks Jr., Esq.
Jacobson & Rooks, LLC
525 Route 73 North,
Suite 104
Marlton, NJ 08053
(856) 874-8999

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: